

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DANIEL CLAY,

Plaintiff,

-v-

9:08-CV-676 (NAM/DRH)

**R.N. KELLMURRAY, Nurse, Clinton
Correctional Facility,**

Defendant.

APPEARANCES:

DANIEL CLAY
99-A-0386
Coxsackie Correctional Facility
Post Office Box 999
Coxsackie, New York 12051
Plaintiff, *Pro Se*

HON. ANDREW M. CUOMO, Attorney General of the State of New York
KRISTA A. ROCK, ESQ., Assistant Attorney General
The Capitol
Albany, New York 12224
Attorney for Defendant

Hon. Norman A. Mordue, Chief U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

In this *pro se* action under 42 U.S.C. § 1983, plaintiff, an inmate in the custody of the New York State Department of Correctional Services (“DOCS”), claims that defendant, a nurse at Clinton Correctional Facility, violated his constitutional rights under the Eighth Amendment. Defendant’s motion for summary judgment (Dkt. No. 23) was referred to United States Magistrate Judge David R. Homer for a Report and Recommendation pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c). Magistrate Judge Homer issued a Report and

Recommendation (Dkt. No. 35) recommending that the motion for summary judgment be granted and the complaint dismissed.

Plaintiff has objected to the Report and Recommendation. Given the nature of plaintiff's objection, the Court reviews the Report and Recommendation *de novo*. See 28 U.S.C. § 636(b)(1)(C). The Court agrees with Magistrate Judge Homer's Report and Recommendation in all respects. Plaintiff attaches additional documents to his objection, states that he had difficulty obtaining them, and requests that the Court consider them. The Court has reviewed these records and finds that they do not alter the conclusion that the action lacks merit for the reasons set forth in the Report and Recommendation. Accordingly, on *de novo* review, and upon considering the documents attached to plaintiff's objection, the Court accepts the Report and Recommendation and grants defendant's motion for summary judgment.

It is therefore

ORDERED that the Report and Recommendation by United States Magistrate Judge David R. Homer (Dkt. No. 35) is accepted in its entirety; and it is further

ORDERED that defendant's motion for summary judgment (Dkt. No. 23) is granted and the action dismissed on the merits.

IT IS SO ORDERED.

Date: May 13, 2010


Norman A. Mordue
Chief United States District Court Judge